



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FTI/168137

PRELIMINARY RECITALS

Pursuant to a petition filed August 19, 2015, under Wis. Stat. § 49.85(4), and Wis. Admin. Code §§ HA 3.03(1), (3), to review a decision by the Public Assistance Collection Unit in regard to FoodShare benefits (FS), a hearing was held on September 10, 2015, via telephone.

The issues for determination are whether Petitioner's appeal is timely as to a notice of FoodShare overissuance and whether the Department may intercept the Petitioner's tax refund to collect an overissuance of FoodShare benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Leslie Vosters
Public Assistance Collection Unit
PO Box 8938
Madison, WI 53708-8938

ADMINISTRATIVE LAW JUDGE:

David D. Fleming
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County. She is considered an elderly, blind or disabled household for FoodShare purposes.
2. Petitioner filed this appeal to contest a June 5, 2014 Notice of FoodShare Overissuance and a November 14, 2014 tax intercept notice.

3. Petitioner was sent a Notification of FoodShare Overissuance dated June 5, 2014 that informed Petitioner that her FoodShare household that had been overissued FoodShare benefits in the amount of \$567.00 for the period of February 1, 2014 through April 30, 2014. (Claim# [REDACTED]).
4. Petitioner was sent a tax intercept notice dated November 14, 2014 that informed Petitioner that her taxes were subject to intercept to repay a public assistance debt and the claim referenced at Finding # 3 was listed.
5. The reason for the alleged overissuance was that Petitioner had moved out of the State of Wisconsin and did not inform the State.
6. The notices referred to above were sent to Petitioner at a Milwaukee post office box number that Petitioner was using as her address for her FoodShare case.
7. The overpayment notice involved here and well as the tax intercept do contain appeal instructions.
8. Petitioner moved back to Wisconsin and opened a FoodShare case as of January 2015 and has had a recoupment on her case since then, repaying \$150.00 of the \$567.00 overpayment.
9. This appeal was filed on August 19, 2015.

DISCUSSION

At the outset I note that this hearing was conducted via telephone and the connection was such that Petitioner was hard to understand.

The State is required to recover all FoodShare overpayments. An overpayment occurs when a FoodShare household receives more FoodShare than it is entitled to receive. 7 C.F.R. §273.18(a). The Federal FoodShare regulations provide that the agency shall establish a claim against a FoodShare household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(a)(2).

Once an overpayment is established, Wis. Stat. § 49.85 provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayment of general relief benefits, overissuance of food stamps, overpayment of AFDC and Medical Assistance payments made incorrectly.

The Department must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. *Id.* at § 49.85(3).

The hearing right is described in Wis. Stat. § 49.85(4)(b) but is limited:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing. (Emphasis added).

The time limit for filing an appeal of a tax intercept notice is 30 days. §49.85(3)(a)2, Stats.

As for the underlying overpayment, the Division of Hearings and Appeals can only make a decision on the merits of the matter it has jurisdiction, that is to say, legal authority to do so. One of the components of that legal authority is the requirement that an appeal be timely filed. For FoodShare cases an appeal must be filed within 90 days of the date of a negative action on the case by the agency. See *FoodShare Wisconsin Handbook (FSH)*, §6.4.1 and 7 CFR, §273.15(g).

The initial questions here are whether or not Petitioner's appeal is timely as to the underlying overpayments as well as the tax intercept.

Again the audio quality of this telephone call was less than optimal but I understood Petitioner's testimony to be that she moved to [REDACTED] and gave up her post office box in December 2013. Thus she did not get the notices involved here. She opened a FoodShare case in [REDACTED] and thought that [REDACTED] economic support would contact Wisconsin.

I do not find Petitioner's appeal to be timely as to June 2014 overpayment notice. The agency did send the proper notice to Petitioner's last known address as required by §49.85, Stats. Petitioner continued to use the Wisconsin FoodShare card in both Wisconsin and [REDACTED] during the overpayment period and with an open case certainly had an obligation to report her move. See FoodShare Wisconsin Handbook, §6.1.1.1. She had to have known the case was open as she was using the benefits. Though she contends that she had two Wisconsin cards and her daughter used one and she the other, this makes no sense. Wisconsin records show only one card issued to her. Finally, Petitioner has known about this recoupment since January 2015 and that did not trigger an appeal. I cannot find Petitioner's appeal to be timely as to the overpayment.

As for the tax intercept, again notice was sent to Petitioner's last known address. Thus I do not find the appeal timely as to the tax intercept notice. Again, she had to have known about the recoupment as of January 2015 so even if this tax intercept appeal was timely it affords Petitioner little help here. An appeal of a tax intercept cannot address issues for which there was a prior right to a hearing. *Wis. Stats.*, §49.85(4). As there was a prior right to a hearing for this overpayment this appeal of a tax intercept cannot address the overpayment. Thus the Department may proceed with this tax intercept.

CONCLUSIONS OF LAW

1. That Petitioner's August 19, 2015 appeal is untimely with respect to the June 5, 2014 notice of FoodShare overissuance.
2. That Petitioner's August 19, 2015 appeal is timely with respect to the November 14, 2014 tax intercept notice.
3. That, having had the prior right to a hearing, there is no issue that can be resolved as to the tax intercept.

THEREFORE, it is

ORDERED

That this appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 16th day of October, 2015

\sDavid D. Fleming
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 16, 2015.

Public Assistance Collection Unit

Public Assistance Collection Unit